



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

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www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

01/18/2012

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of West Linn Plan Amendment
DLCD File Number 002-11A

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Wednesday, February 01, 2012

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Chris Kerr, City of West Linn
Angela Lazarean, DLCD Urban Planner
Jennifer Donnelly, DLCD Regional Representative

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FORM 2

DLCD

Notice of Adoption

This Form 2 must be mailed to DLCD within 5-Working Days after the Final Ordinance is signed by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

In person electronic mailed

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**LAND CONSERVATION
AND DEVELOPMENT**
For Office Use Only

Jurisdiction: CITY OF WEST LINN

Local file number: CDC-09-05

Date of Adoption: JANUARY 9, 2012

Date Mailed: JANUARY 11, 2012

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: MAY 13, 2012

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

ALLOW HOME OCCUPATIONS THAT OPERATE AS MUSIC OR DANCE SCHOOLS ETC. TO BE EXEMPT FROM TRIP LIMITATIONS.

Does the Adoption differ from proposal? Please select one

NOT SIGNIFICANTLY

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location:

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

<u>1</u>	2	3	4	5	6	7	8	<u>9</u>	10	11	12	13	14	15	16	17	18	19
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

35-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. 002-11A (18832) [16893]

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: **PETER SAR**
Address: **22500 SALAMO ROAD**
City: **WEST LINN** Zip: **97068**

Phone: **(503)723-2539** Extension:
Fax Number: - -
E-mail Address: **PSPIR@WESTLINNOREGON.GOV**

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on **light green paper if available**.
3. Send this Form 2 and **one complete paper copy** (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

9. **Need More Copies?** Please print forms on **8½ -1/2x11 green paper only if available**. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

**ORDINANCE NO. 1606
WEST LINN, OREGON**

**AMENDING COMMUNITY DEVELOPMENT CODE CHAPTER 37
RELATING TO HOME OCCUPATIONS**

WHEREAS, the Community Development Code ("CDC") is periodically modified in response to local issues, statutory requirements, for clarity and to correct errors and inconsistencies; and

WHEREAS, the proposed code amendments meet the criteria for legislative amendments stated in Section 98.100 of the CDC; and

WHEREAS, the proposed code amendments are compliant with the goals and policies of the Comprehensive Plan; and

WHEREAS, the proposed code amendments are compliant with the Statewide Planning Goals; and

WHEREAS, the City of West Linn notified the Department of Land Conservation and Development more than 45 days prior to the first evidentiary hearing on the proposed amendments; and

WHEREAS, the City provided legislative notice of its intent to revise the CDC pursuant to CDC notice provisions; and

WHEREAS, the City of West Linn published notice of the Planning Commission public hearings regarding the proposed amendments on July 21, 2011 and October 20, 2011; and

WHEREAS, the Planning Commission conducted public hearings on the proposed amendments on August 3, 2011 and August 17, 2011 and November 2, 2011; and

WHEREAS, after considering the public testimony regarding the proposed code amendments, the Planning Commission recommended approval of the below amendments to Subsections 37.020(A) (10) and (13) of the City of West Linn Community Development Code, regulating home occupations; and

WHEREAS, the City of West Linn published notice of the City Council public hearing regarding the proposed amendments on December 1, 2011; and

WHEREAS, the City Council held a public hearing on January 9, 2012 and after considering the public testimony regarding the proposed code amendments, the City Council approved amendments; and

WHEREAS, the measures adopted by this Ordinance comply with the state and other governing laws and are reasonably related to the public health, safety and welfare; and

WHEREAS, school curriculums do not provide all desired music classes, academic tutoring and instruction services and the City supports and encourages educational opportunities outside of the traditional school setting; and

WHEREAS, home occupations provide the opportunity for needed student tutelage within the City, beyond that provided by schools.

NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:

Section 1: Subsection 37.020 A(10) and (13) of the City of West Linn Community Development Code are hereby amended to read as follows:

A. A home occupation shall comply with all the following operating standards:


10. Occupied or unoccupied ~~Vehicles~~ *vehicles associated with the home occupation shall not be left with have engines idling at any time, except during the immediate loading or unloading of cargo, mail, packages or passengers.* ~~or Vehicles associated with the home occupation shall not be loaded or unloaded~~ *between the hours of ~~6:00~~ 7:00 p.m. and 7:00 a.m. Monday through Friday, or between the hours of 6:00 p.m. to 9:00 a.m. on Saturday and Sunday. Other noise-generating machinery associated with conducting a home occupation shall also follow these guidelines.*

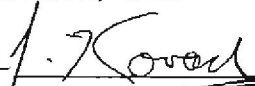
13. *The use creates no more than ~~five~~ eight total deliveries vehicle trips per day including employees, all deliveries, and customers. ~~vehicular trips per day~~. One trip is equal to one vehicle entering the site and exiting the site. Home occupations with pupils or students, such as, but not limited to, dance, music or language classes, are exempt from the vehicle trip limitation.*

Section 2: This ordinance shall be effective 30 days after its passage by the Council.

PASSED AND APPROVED THIS 9th DAY OF JANUARY, 2012.

ATTEST:


KATHY MOLLUSKY, CITY RECORDER


JOHN KOVASH, MAYOR

APPROVED AS TO FORM:


CITY ATTORNEY

Date: January 9, 2012
To: Chris Jordan, City Manager
From: Peter Spir, Associate Planner
Subject: Staff memo proposing amendments to the Community Development Code (CDC-09-05) relating to home occupations distinct from the Planning Commission's recommended amendments

PURPOSE

The purpose is to consider staff amendments to Chapter 37 of the Community Development Code (CDC) relating to home occupations. The language recommended by the Planning Commission would increase the number of round trips per day for home occupations from five to eight and increase the hours that vehicles may be loaded or unloaded or left with idling engines from 7:00 am-6:00 pm to 7:00 am-7:00 pm on weekdays. Staff's recommendation would be to return to the pre-2008 language and exempt students from trip generation limitations and seek to limit vehicle noise and emission levels.

BACKGROUND

Planning Commission hearing

On August 3, 2011, the Planning Commission held a public hearing on proposed CDC housekeeping amendments including amendments related to home occupations. Five people testified in favor of increasing allowable trip generation for home occupations. A petition, also supportive, was submitted into the record. There was no opposition to the home occupation amendments. Concerned that this issue eclipsed the definition of "housekeeping" code amendments and wanting to hear and consider both sides of the issue, the Planning Commission voted unanimously to recommend approval of the CDC amendment package with the exception of the home occupation element.

City Council hearing

At the City Council hearing on September 26, 2011, City Council remanded the home occupation element back to the Planning Commission with the expectation that further testimony would be heard and it would then be returned to City Council for a final hearing.

Notice

Staff sent notice of the November 2, 2011 Planning Commission hearing to all property owners within 100 feet of nine home occupations that offer tutoring (piano, language, etc.), which translates into 105 households. The expectation was that these homeowners living next door to home occupations would accurately represent those individuals most likely to be impacted by the proposed code changes. Please note that this additional notice eclipsed what is statutorily required.

Second Planning Commission hearing

On November 2, 2011, the Planning Commission held another public hearing on proposed amendments pertaining to home occupations. Written and oral testimony from homeowners along

Linn Lane who are adjacent or near a home occupation providing music lessons declared ongoing concern about the noise and general disturbances associated with cars dropping off and picking up students. They also spoke about the noise of idling engines, car stereos and loud cell phone conversations as parents sit in their cars waiting for their children. In addition they indicated that some motorists were driving too fast on the narrow lane, creating safety risks.

Lower speed limit

Subsequent to the Planning Commission hearing, and in response to safety concerns on Linn Lane, the Public Works Department posted new speed limit signs dropping the speed limit from 25mph to 15mph.

Code enforcement

To address the issues associated with the operation of the home occupation along Linn Lane, the City's Community Service Officer (CSO) has met with, or corresponded with, Mrs. Cassella and at least one of the neighbors complaining about the home occupation's impacts. The CSO explained the importance for the parents of the music students to adhere to the posted speed limit and respect the private property rights of the neighbors. The record includes a letter that Mrs. Cassella sent to her students and their parents emphasizing the importance of adhering to the City's requirements.

ANALYSIS

The testimony from a home occupation operator teaching music indicates that she needs at least 10 students to be economically viable, but the current code only allows home occupation to generate 5 trips. Over the past 20 years, home occupations that involve pupils or students have been largely exempted from restrictions on trip generation:

- 1983 home occupations "shall not generate vehicular traffic measurably in excess of that normally associated with a single family residential use."
- 1999 type I home occupations: "shall have no more than five deliveries or customer trips (to and from) per day, not including instruction of pupils, except home stay guests are permitted."
- 1999 type II home occupations stated the use could create "no more than 10 deliveries or trips (to and from) per day, not including instruction of pupils."
- 2007 type I home occupations: "shall have no more than five deliveries or customer trips (to and from) per day, not including instruction of pupils."
- 2007 type II home occupations stated the use could create "no more than 10 deliveries or trips (to and from) per day, not including instruction of pupils and trips generated by bed and breakfast guests."
- 2008 to present. Home occupations no longer exempt students and pupils from trip limitations and a limit of five round trips per day was established.

Why was the CDC changed in 2008 to limit trip generation from home occupations? To see if there was some background or public concern that might explain why the exemption was eliminated, staff uncovered an April 10, 2008 memo to Chris Jordan, City Manager from Senior Planner Chris Kerr which summarized an earlier City Council work session regarding proposed amendments (CDC-07-02) to Chapter 37:

"2. The Council requested that the existing CDC language that specifically excludes vehicular trips that are associated with the instruction of pupils be deleted. Currently, when evaluating the impacts of a home occupation, trips related to instructing pupils are not included in the traffic calculation. This is inappropriate since vehicle traffic is a principle cause of disruption in residential communities, regardless of its origin. Therefore, Staff supports amending this Section of the Code to clarify that the impacts of a home-based business will include all trips associated with the use."

Based on the minutes of the August 14, 2008 City Council hearing and the subsequent vote that removed the trip exemption for students, it seems that City Council agreed that unrestricted trip generation, regardless of whether it is customers, employees or students, could adversely impact the quality of life in a residential neighborhood and that student trips should be counted in the daily trip tally. "A trip is a trip".

Day cares are exempt from trip limitations

Staff noted in both the Planning Commission hearing and at the City Council work session a misapprehension that a day care facility's relatively high morning drop-offs and late afternoon peak pickups needed to be factored into the decision. Day care facilities serving up to 16 children are exempt by Oregon Revised Statute 657A.440 from any local zoning ordinance that would be more restrictive to day care than it is to residential uses. Consequently, we are prohibited from limiting the number of trips to these day cares since we do not limit the number of trips coming to and from single family homes.

What other cities allow

Staff also surveyed of other jurisdictions and discovered the following:

City	Number of allowed trips or standard
Tigard	6 per day
Wilsonville	traffic must be "kept to a minimum"
Beaverton	8 per day
Hillsboro	10 per day on average
Portland	8 per day
Tualatin	10 per day and 20 per day for instructional related home occupations
Lake Oswego	"...shall not alter the residential character of the neighborhood."

Planning Commission and staff recommendations regarding trip generation

The Planning Commission sought to strike a balance between a music teacher's desire for 10 or allowed trips per day and neighbor's concerns about traffic safety by limiting the number of visits to 8 round trips per day.

As was stated during the Planning Commission discussion on this topic, deference should be given to the underlying residential zone and the rights of neighboring homeowners to the quiet and safe

enjoyment of their property and environs. When people buy into a residential neighborhood, they do so with the reasonable expectation that they will not have to contend with, or accommodate, uses that have the potential to generate commercial level traffic and associated impacts and hazards. The Planning Commission recommendation and the current regulations address those concerns but, if they were rigorously enforced, it could mean the curtailment or closure of most of the city's music schools and similar home occupations that offer learning programs.

Not to take away from the very real complaints of the residents along Linn Lane who submitted testimony, but the Linn Lane home occupation is an anomaly. In a city of hundreds of home occupations, the vast majority of which fit in well with their surrounding neighborhoods, in staff's opinion, codes should not be written in response to anomalies but for the majority of cases.

Hours of vehicular drop off and pick up

The Planning Commission recommended extending weekday hours that students may arrive and depart by vehicles to 7:00 pm, noting that busy after school schedules make it difficult to complete classes by 6:00 pm.

Engine idling

Some neighbors of the home occupation along Linn Lane complained that the noise and fumes from idling vehicles diminished the livability of the area. Currently, the home occupation approval criterion includes 37.020 A(10):

"Vehicles associated with the home occupation shall not be left with engines idling, or loaded or unloaded between the hours of 6:00 p.m. and 7:00 a.m. Monday through Friday, or between the hours of 6:00 p.m. to 9:00 a.m. on Saturday and Sunday. Other noise-generating machinery associated with conducting a home occupation shall also follow these guidelines."

To better address the issues with idling vehicles, staff recommends prohibiting idling vehicles associated with home occupations (see Options 2) except during the immediate pick up and drop off of passengers, cargo, mail or packages. This should address, in part, the Linn Lane situation while at the same time not encumbering other home occupations.

APPROVAL CRITERIA AND FINDINGS

The approval criteria for legislative amendments are found in Chapter 98 of the CDC.

98.100 STANDARDS FOR DECISION

- A. *The recommendation of the Planning Commission and the decision by the City Council shall be based on consideration of the following factors:*
1. *The Statewide planning goals and rules adopted under Chapter 197 ORS and other applicable State statutes;*
 2. *Any federal or State statutes or rules found applicable; and*
 3. *Applicable plans and rules adopted by the Metropolitan Service District.*
 4. *The applicable Comprehensive Plan policies and map; and*
 5. *The applicable provisions of the implementing ordinances.*
- B. *Consideration may also be given to:*

1. *A mistake or inconsistency in the Comprehensive Plan or implementing ordinance as it relates to the property which is the subject of the proposal; and*
2. *Factual oral testimony or written statements from the parties, other persons and other governmental agencies relevant to the existing conditions or factors in subsection A or (B)(1) of this section. (Ord. 1226, 1988; Ord. 1474, 2001)*

The applicable standards from CDC Section 98.100 are addressed in the findings that follow.

Finding No. 1: Statewide Goal 1 Citizen Involvement

The City's acknowledged Comprehensive Plan and CDC provide for, or exceed, all requirements for a citizen involvement program which defines the procedures by which the general public will be notified of, and participate in, the legislative hearing process. All required notification measures and opportunities for input have been provided. By remanding these amendments to the Planning Commission the opportunity for more extensive public involvement was created. In addition to the statutorily required public notice of the hearing, staff mailed notice to 105 property owners most likely to be impacted by the amendment: property owners within 100 feet of nine existing home occupations with students or pupils. This notification had the desired result in that we now have testimony in the record that covers both sides of the debate.

Finding No. 2: Federal, State or Metro laws or Regulations

The "equal protection" provisions of the Constitution requires that findings be made that the different code standards proposed for students vs. non-student home occupations, in option B, be "reasonably related" to a "legitimate" government interest. To that end, staff finds that the City supports and encourages educational opportunities outside of the traditional school setting. Home occupations provide needed student tutelage in many areas that have been dropped from school curriculums, such as music lessons, academic tutoring and instruction services.

Providing local opportunities for student tutelage also responds to the State's Transportation Planning Rule (TPR) by reducing vehicle miles travelled to tutors outside of West Linn which in turn reduces vehicle emissions, gas consumption and traffic congestion on area and regional streets. Staff finds that Oregon Revised Statute 657A.440 has already been discussed earlier relating to day cares and applies only in a peripheral sense.

Finding No. 3: West Linn Comprehensive Plan

The following goals, policies and recommended action measures of the Comprehensive Plan make numerous references to home occupations and their value but the language is tempered with the stated need to protect surrounding residential areas from negative impacts:

Goal 9: Economic Development Goal 1: "Support telecommuting, home based businesses compatible with residential neighborhoods...."

Goal 9: Economic Development Policy 1: "Promote home occupations by developing and implementing supportive zoning and building codes and services and other regulations; require compatibility with surrounding neighborhoods."

Goal 9: Economic Development, Recommended Action Measure 4: "Identify businesses, including those that support home occupations that do not negatively impact surrounding residences and neighborhoods that the City will encourage to develop or expand in West Linn."

Goal 9: Economic Development Recommended Action Measure 13: "Explore ways of encouraging home-based businesses that do not negatively impact surrounding residences and neighborhoods."

Goal 2: Land Use Planning, Residential Development Policy 8: "Protect residentially zoned areas from the negative impacts of commercial, civic, and mixed use development, and other potentially incompatible land uses."

Goal 10: Housing, Goal 1: "Preserve the character and identity of established neighborhoods."

Goal 12: Transportation, Street Policy 2: "Protect neighborhoods from excessive through traffic and travel speeds while providing reasonable access to and from residential areas."

Goal 6: Air, Water, and Land Resources Quality, Section 4, Noise Control: Goal 1: "Maintain and promote a quiet and healthful environment for the citizens of West Linn"

Goal 6: Air, Water, and Land Resources Quality, Section 1, Air Quality: Policy 5: "Encourage employment, mixed uses, and home occupations within West Linn to reduce commuting and reduce the distance traveled for shopping and other essential services."

Goal 9: Economic Development, Goal 1: "Support telecommuting, home-based businesses compatible with residential neighborhoods and, in general, a higher jobs-to-housing ratio."

Goal 11: Public Facilities, Policy 14: "Strive to provide public facilities and services that encourage home based businesses."

Goal 11: Public Facilities, Recommended Action Measure 3: "Explore ways to better serve home-based businesses through innovative programs dealing with infrastructure, incentives, and reduced barriers and regulations."

Goal 13: Energy Conservation Recommended Action Measure 5(c): "Reduce commuting and use of fossil fuels by: Encouraging telecommuting and establishment of home-based businesses."

Staff finds that so long as negative impacts can successfully addressed, the compatibility of home occupations with surrounding neighborhoods is substantially met and conformance with the Comprehensive Plan goals, policies and recommended action measures is achieved.

Finding No. 4: Implementing ordinance

Staff finds that the proposed code amendments are consistent with the existing CDC language, past CDC language and the review procedures that other jurisdictions apply to home occupations.

OPTIONS

Staff has included for the City Council's consideration three alternative amendments related to vehicular trips for home occupations:

OPTION 1: Planning Commission's Recommendation

37.020 GENERAL STANDARDS

A. A home occupation shall comply with all the following operating standards:

10. Vehicles associated with the home occupation shall not be left with engines idling, or loaded or unloaded between the hours of ~~6:00~~ 7:00 p.m. and 7:00 a.m. Monday through Friday, or between the hours of 6:00 p.m. to 9:00 a.m. on Saturday and Sunday. Other noise-

generating machinery associated with conducting a home occupation shall also follow these guidelines.

13. The use creates no more than ~~five~~ **eight** total deliveries **vehicle trips per day** including employees and customer vehicular trips per day. One trip is equal to one vehicle entering the site and exiting the site.

OPTION 2: Exempt student/pupil trips from the trip generation limit

A. A home occupation shall comply with all the following operating standards:

10. **Occupied or unoccupied** ~~V~~vehicles associated with the home occupation shall not be left ~~with~~ **have** engines idling **at any time, except during the immediate loading or unloading of cargo, mail, packages or passengers.** ~~or~~ **Vehicles associated with the home occupation shall not be loaded or unloaded** between the hours of ~~6:00~~ **7:00** p.m. and 7:00 a.m. Monday through Friday, or between the hours of 6:00 p.m. to 9:00 a.m. on Saturday and Sunday. Other noise-generating machinery associated with conducting a home occupation shall also follow these guidelines.

13. The use creates no more than ~~five~~ **eight** total deliveries **vehicle trips per day** including employees, **all deliveries,** and customers, ~~vehicular trips per day.~~ One trip is equal to one vehicle entering the site and exiting the site.

Home occupations with pupils or students, such as, but not limited to, dance, music or language class, are exempt from the vehicle trip limitation.

OPTION 3: Leave the CDC "As Is" at just five vehicle trips per day with no vehicular activity after 6 p.m.

RECOMMENDATION

Staff recommends approval of Option 2.

**PROPOSED AMENDMENTS TO CHAPTER 37 OF THE
COMMUNITY DEVELOPMENT CODE**

(CDC 09-05)

CITY COUNCIL PUBLIC HEARING DRAFT

January 9, 2012

Notes:

Plain text =	existing regulation
Strike through =	proposed deletion to existing regulations
<u>Underline</u> =	proposed addition

37.020 GENERAL STANDARDS

A. A home occupation shall comply with all the following operating standards:

1. The home occupation shall be a secondary use to the primary use of the house as a residence.
2. In no way shall the appearance of the residential structure or yard be altered, or the occupation within the residence be conducted in a manner which would cause the premises to differ from its residential character by the use of colors, materials, construction, lighting, show windows, signs, or advertising visible outside the premises to attract customers or clients, other than a sign as permitted per subsection (A)(9) of this section.
3. There shall be no outdoor use or storage of material or mechanical equipment that is not part of the residential use.
4. An accessory building which meets the provisions of Chapter 34 CDC may be used for the home occupation.
5. Any parking generated by patrons shall be accommodated on site.
6. Off-street parking areas with three or more spaces shall be screened by a fence constructed per Chapter 44 CDC specifications, topography, vegetation, or a combination of these methods. Screening vegetation must be in place by the time the applicant submits a home occupation application, or be reasonably expected to provide effective screening within one and one-half years of approval of said application.
7. No equipment or process shall be used in a home occupation which creates noise, odor, smoke, fumes, fallout, vibration, heat, glare, or electrical interference resulting detectable to the normal senses off the lot.
8. No more than three employees, other than the residents, shall be engaged in service on the premises at any given time.

9. a. The use of signs shall be limited to one sign not greater than one foot by six inches in area and flush-mounted to the residential dwelling. In the event that the residential dwelling is set back more than 100 feet from the abutting public street, or otherwise obstructed from view due to topography or landscaping, the allowed sign may be located at the driveway access. Freestanding signs shall be mounted on a base equal to, or less than, the width of the sign. The freestanding sign and its base shall not exceed three feet in height. Approval standards in CDC 52.210 governing sign design apply.

b. Signs advertising home occupations in the historic district or in a designated historic landmark per Chapter 26 CDC shall be subject to the design standards in CDC 58.090(C)(25)(b).

10. Vehicles associated with the home occupation shall not be left with engines idling, or loaded or unloaded between the hours of ~~6:00~~ 7:00 p.m. and 7:00 a.m. Monday through Friday, or between the hours of 6:00 p.m. to 9:00 a.m. on Saturday and Sunday. Other noise-generating machinery associated with conducting a home occupation shall also follow these guidelines.

11. The owner of the business must reside in the primary structure on the premises.

12. Only one vehicle no larger than a three-quarter-ton truck may be used by the occupant, directly or indirectly, in connection with a home occupation. An off-street parking space shall be provided for this vehicle.

13. The use creates no more than ~~five~~ eight total ~~deliveries vehicle trips per day~~ including employees, all deliveries, and customers, ~~vehicular trips per day~~. One trip is equal to one vehicle entering the site and exiting the site.



CITY OF
West Linn

PLANNING COMMISSION

Minutes of November 2, 2011

Members present: Chair Robert Martin, Vice Chair Michael Babbitt, Gail Holmes, Holly Miller, Laura Horsey, Christine Steel and Dean Wood

Members absent: None

Council Liaison: Teri Cummings

Staff present: John Sonnen, Planning Director; Peter Spir, Associate Planner; And Damien Hall, City Attorney

PRE-HEARING WORK SESSION

Chair Martin convened the work session at approximately 6:45 p.m. in the Rosemont Room of City Hall. Director Sonnen advised that Commissioner Wood's and Commissioner Horsey's terms were about to expire. Associate Planner Spir briefed the Commissioners to prepare them for the upcoming hearing regarding home occupations. The Council had remanded the proposed amendments back to the Commission to address trip generation impacts on neighborhoods. Written testimony had been coming in up to that day. The staff explained how they determined which type of home occupation would be notified. They notified types that had historically generated complaints, such as home instruction. They notified businesses that typically generated traffic, but not all, due to the cost. Spir clarified that the problem of a developer using a house for a business but not as a residence was an enforcement problem. Commissioner Horsey observed the proposed language included delivery trips. Spir explained for Chair Martin that removing the exclusion for student trips had been done to address a fairness issue. People questioned why a business that generated student traffic should be allowed to generate more trips than other businesses did. He clarified the code did not define Peak Hour. He indicated he would introduce new language that would require all patron parking to be accommodated on site so it would not impact others' private property and driveways. The staff also proposed to prohibit idling of vehicles. The Commissioners enjoyed a few minutes of quiet time to read the materials in the record.

The Commissioners prepared for the Items of Interest to the CCI segment. They took a few minutes to quietly read a letter Commissioner Steel had drafted. Commissioner Horsey asked if Lynn Fox's comments had been responded to. The Commissioners recalled Ms. Fox had not been present when they discussed her comments. Chair Martin indicated it would be a good idea to communicate what they had talked about with her. Horsey was concerned that the recommendation that called for "consistent and predictable" methods would be interpreted to mean the CCI did not advocate trying anything new. Steel recalled Vice Chair Babbitt had suggested that. Babbitt clarified that "consistent" set a level of expectation of what citizens could expect from the City. He clarified that his point was people should know where they could get the information. He felt the draft recommendations were too general. One could

argue the City already did that. That would not solve the problem that the current process was so general and vague and had so many loopholes things got missed all the time. The CCI recommendations should describe specific ways the Council could change procedures, policies and code that would fix the problem. Commissioner Wood observed the City's land use procedure was already described on the website. Chair Martin preferred to try to give direction regarding what needed to be done without giving the specifics of how it should be done. That would allow the people creating plans to come up with an appropriate way to do it. The CCI would review it to ensure they had identified legitimate stakeholders with all points of view and had an adequate plan. Babbitt questioned whether that would change anything other than to create another level of bureaucracy. He noted the Planning Director had already started giving the Commissioners timelines and dates. He did not believe the Council would follow the recommendation to offer people an opportunity for public comment because he anticipated the Councilors would say they were too busy.

Councilor Cummings asked which processes the letter was referring to. The Commissioners reorganized the letter to make it clearer that the recommendations related to legislative changes that were initiated by the City, not quasi-judicial. Chair Martin explained the Commissioners did not want to see one person in City government deciding to implement a plan and pushing it through based on his own passion when no one else in the City would consider it that important. He confirmed to Councilor Cummings that there should be support by all five Councilors and public discussion before the Council prioritized a new planning process. He acknowledged the Council had done that when it voted to spend money for a trails plan consultant, but the Commission wanted the prioritization process to have more visibility. Babbitt agreed that the trails process satisfied the recommendation but he noted the recommended action did not fix the problem. Chair Martin anticipated the Commissioners would consider how specific the letter should be at the regular meeting. Attorney Hall observed the draft letter did not describe what specific actions the Commissioners wanted the Council to take.

REGULAR MEETING - CALL TO ORDER

Chair Martin called the regular Planning Commission meeting to order in the Council Chambers of City Hall at 7:30 p.m.

PUBLIC COMMENTS (None)

APPROVAL OF MINUTES

Vice Chair Babbitt moved to approve the Minutes of September 21, 2011. Commissioner Steel seconded the motion and it passed 4:0:3. Commissioners Miller, Horsey and Wood abstained.

PUBLIC HEARING

(Note: The staff reports and all related documents for the hearings are available through the Planning Department.)

CDC-09-05, Proposed CDC amendment pertaining to home occupations

Chair Martin opened the public hearing and outlined the applicable procedure. He asked the Commissioners to declare any conflict of interest. None were declared. When invited by the Chair no one in the audience challenged the authority of the Planning Commission or the ability of any individual Commissioner to hear the matter.

Staff Report

Peter Spir, Associate Planner, presented the staff report. The Council had remanded the home occupation portion of a package of housekeeping amendments back to the Commission. They thought this was more than just a minor amendment. The motion they had approved was to direct staff to prepare code amendments to the vehicle trip standards Section 37.020(A) of the CDC for the purpose of addressing its impacts on desirable home occupation uses without adversely impacting the surrounding neighborhood.

Planner Spir reported the current code limit of five trips per day worked well in most situations except where the home occupation involved teaching classes. One such operator had asked the City to allow up to ten trips per day. Up to 2008 the City had exempted student trips from the trip limit. Then the five-trip limit had been applied to all home occupations in the interest of fairness. A survey of other cities indicated the majority applied a limit of up to ten trips. Lake Oswego and Wilsonville had performance-oriented requirements and did not impose a specific number limit. Spir discussed the alternatives of increasing the limit to ten trips per day or a limit of five trips per peak hour. He cautioned that depending on how many "peak hour" periods there were in a day five trips per peak hour could add up to 40 trips. That was going too far because it exceeded what the national traffic engineers' manual showed for a business office in a general commercial zone. The staff also proposed criteria to address neighborhood nuisance. They would modify criterion A(5) related to parking so it specified that no vehicle associated with the use could be maneuvered or parked on nearby private driveways or private property. They proposed a ban on idling in A(10) that would specify that vehicles associated with the home occupation, including including customers, clients, deliveries, drop offs and pickups at the house could not be parked with engines idling at any time. Spir explained the staff had opted to defer to the interest of preserving neighborhood character and tranquility rather than the interest of the home occupation.

Chair Martin considered recusing himself from hearing the proposal because it could affect the competitiveness of a home based preschool. He and his wife owned a Montessori School that competed with home occupation schools and daycare. He decided against recusing himself after Spir clarified that state statutes protected a Montessori School and daycare from local standards.

During the questioning period, Commissioner Wood asked what the pre-2008 code specified; if the staff had considered going back to the pre-2008 code language; and if permit compliance was tied to the business license. Spir confirmed it was tied to the license. He recalled the old

code differentiated between a Type 1 home occupation permit that allowed one employee (the owner) and up to three trips and a Type 2 permit that allowed more employees and impacts and applied parking requirements. A Type 1 permit could be granted by the Planning Director and a Type 2 permit application was heard by the Planning Commission. During the time Spir worked for West Linn there had not been any Type 2 applications. Commissioner Horsey asked if the code could differentiate between types of trips and place a lower limit on deliveries. She was concerned raising the limit for all trips - including deliveries - would result unintended consequences. The impact of delivery vehicles such as UPS trucks was different than the impact of cars carrying students. She mentioned some home based businesses on her street. The music teacher likely generated more trips than current standards allowed and the other home business got two or three deliveries per day but they were not considered a problem. However, allowing up to 10 delivery trucks per day would impact the neighborhood. Spir clarified for Commissioner Steel that the staff was introducing additional proposed prohibitions related to parking and idling that night (see page 8 of the packet). He explained for Horsey that how many "peak" hours there could be in a day had never been defined. He explained the staff had not analyzed the impact yet, but they did not favor the peak hour limit alternative because a business that had eight peak hours in each day could generate up to 40 trips per day. Even if the limit were lowered to three peak hour trips it would still be an inappropriate number of trips.

Public Testimony - Proponents

Scott Richards, 3467 Cascade Terr., was in favor of increasing the vehicle trip limit to ten per day. His daughter gave violin lessons. Teachers teaching out of their own homes were a valuable asset to the City. This was her sole source of income. Students came for half-hour lessons from just after school to 6:45 p.m. Parents waited and then took the children home. He held that was not an excessive use of the streets or disturbance of the peace. In his own neighborhood teenage traffic created a lot more activity than student traffic. He said West Linn needed to support its small businesses and enrichment of its children.

Opponents

Rita Baseman, 5152 Linn Ln., explained her main concern was that the 25 mph speed limit on her quiet, subgrade, narrow, sloped, dead-end street with no sidewalks felt too fast. She believed the majority of her neighbors on that street also wanted to see the speed limit lowered. Vehicles going that fast endangered the many children who either lived there or visited their grandparents who lived there. She asked the City to revisit the speed limit. Chair Martin explained that issue was not within the scope of the current hearing, but perhaps the staff could look into some kind of traffic calming device. Director Sonnen indicated he would relay her concern to the City Manager.

Ms. Baseman related that a violin teacher lived on her street and taught students there. She held that if the City doubled the number of trips a home occupation was allowed to generate that was too much of a jump. She suggested setting the limit at 7 or 8 trips for a trial period.

She advised that the 100-foot notice area was not adequate because about a lot of homes on the street and the majority of residents who were impacted had not received notice. She testified the neighbors had held an informal neighborhood meeting and everybody had been welcome, including the petitioner. People were sympathetic and understood her personal need to do what she was doing. She was an excellent teacher. But there was a problem with speed. It was especially a problem with a couple of people, but it was a consistent problem. Their attitude was that they were driving the legal speed and the complainer should get off their back. She indicated she thought the speed problem affected most peoples' feelings about how many cars went down the street. She calculated that allowing up to ten trips would mean there would be at least 20 cars going back and forth. But each student visit could generate as many as four trips because the drivers tended to come; leave to go to Starbucks; and then come back. Baseman observed that the people who were most impacted were not present for some reason. She acknowledged that she was not as impacted. She did not have little kids or live as close to the home occupation as some who had little kids. But she thought the speed problem concerned most people. She mentioned Lake Oswego's approach: the use had to fit the character of the neighborhood. She stressed hers was a quiet street and speed was a concern.

During the questioning period, Commissioner Holmes wanted to know if people who came to the house for violin lessons were parking on the street or in the driveway of the home occupation. Ms. Baseman explained she did not live right next to the teacher's house. That driveway was long and narrow and then widened at the house. As far as she knew people were able to park on the driveway and stay on the teacher's property, especially if they came one at a time and the coming and goings of vehicles was synchronized. There was no parking allowed at the end of the street, but there was a little parking area serving a nearby park. That might be a potential place to park, but it might be a little too creepy to walk from there in the dark. When she asked, Chair Martin confirmed the potential amendment would apply citywide. Baseman observed it might not impact people who lived on larger streets like Rosemont. She mentioned that it seemed like a fluid situation. Someone else might move in who also had a home business.

Bruce Jackson, 5185 Linn Ln., explained he was speaking on behalf of his family and a couple of adjacent families who were most affected by one particular business where there had been a lot of vehicles. They had provided documentation to the Commission showing it was currently generating 10 trips per day. They wanted to keep the limit at five. They were concerned the number of home based businesses on the street would multiply and the City would have basically created a business zone in a residential area. He reported one of his immediate neighbors had not gotten a notice. He said his street was unique. He suggested exempting certain streets or applying some local considerations. Mr. Jackson indicated he understood the speed limit was not necessarily a Planning Commission problem and it could be an enforcement issue. The way his driveway was configured he could not see the street until he was actually in the street. The 25 mph limit and the 12% slope created the potential for a serious accident. There had been many close calls. It was a pedestrian connector used by many people with strollers and on skateboards and bikes. The traffic group had declined his request to lower the

speed limit to 15 mph. He acknowledged that by and large when drivers were asked to slow down they did, but some did not. He was concerned that increasing the trip limit from five to ten would double the probability of an accident.

Staff Comments

Planner Spir pointed out all the testimony in the record focused on Linn Lane, but the proposed amendment would apply citywide. Many of the site conditions that existed on that very unique street did not exist elsewhere.

During the questioning period Commissioner Wood inquired regarding enforcement. Director Sonnen advised the enforcement officer had to have documented, time specific evidence the Municipal Court judge could act on. Applying a "peak hours" standard could increase the likelihood of effective enforcement because the officer could arrange to be there during peak hours and not have to monitor the area at all hours of the day. If the home occupation was in violation the officer would first try to bring about compliance. But the owner would be cited, the home occupation permit would be revoked, and the home occupation could not continue to operate if it continued to be in violation of its permit. When asked, he clarified that he had not reviewed the enforcement file of the particular home occupation on Linn Lane and did not know when she had gotten her permit. Commissioner Miller wanted to know if a home occupation permit had been revoked in the past and why the staff proposed the amendment. Had lots of people asked for it? Sonnen recalled the owner of the business on Linn Lane had asked for the amendment. He believed she had been at the first hearing to support the proposal. Chair Martin recalled there had been testimony in support from students at that hearing. Miller commented she found it interesting that there had not been more testimony from the owners of home occupations themselves.

Commissioner Horsey noted some of traffic on Linn Lane was going to the park. She suggested the Commissioners make a note to consider asking the TSP process to look into planning sidewalks there. Chair Martin agreed the City should respond to that potentially dangerous situation. Testimony was residents there were concerned about safety even with a five-trip limit. But that was a separate issue from the one the Commission was considering at the current hearing. He wanted staff to agree to follow up on the citizens' request for speed bumps and the change they could not get before. Sonnen offered to find out why the Traffic Safety Committee had rejected their request and if its position had changed.

Deliberations

Chair Martin closed the public hearing and polled the Commissioners. Vice Chair Babbitt would support the amendments with a limit of a specific number of trips per day. He preferred to include all kinds of trips, including deliveries. He agreed a delivery could be more impactful than a regular vehicle trip. But he did not anticipate that if the limit were raised businesses would suddenly start having ten deliveries a day. He noted the proposed amendments would apply citywide. The change was supported by two Comprehensive Plan policies and

Sustainability plan statements to support home based business and save people from having to go out of town for things like violin lessons. He saw Linn Lane as a special circumstance that needed to be addressed separately. Commissioner Miller favored increasing the trip limit. She also questioned that deliveries would increase if the code allowed more trips. She agreed Linn Lane needed to be addressed separately. Commissioner Wood supported the parking and idling amendments. He wondered why the Commission had not heard much testimony from business owners. He indicated he did not favor increasing the trip limit. The current limit of five was reasonable. He differentiated between occasionally telecommuting from his home and actually running a business out of a home. He stressed a residential neighborhood was not a commercial district and having many home occupations on a residential street could create traffic and safety issues. He was concerned that if the trip limit were raised to ten some home occupations would try to become full time businesses and try to squeeze a few more trips in. That would really become a safety issue. West Linn was a bedroom community and he did not want to see its streets become commercial lanes.

Commissioner Steel was concerned that more business owners had not come to testify. It could be because the notice was not broad enough and they were not aware the proposal would impact them. Only instructional types of businesses had been notified and the 100-foot radius was not wide enough. But she indicated she had been glad to hear the perspectives of both people who benefitted from music lessons and the impacted neighbors. She indicated she would support a compromise of a modest increase to 7 or 8 trips a day (which was what Beaverton and Portland allowed) and the criteria related to other impacts on neighbors. She observed Linn Lane was a small street and the worst case scenario.

Commissioner Horsey indicated she was pleased that more testimony had come in since the first hearing. She was concerned that noticing was too narrow. She would compromise by supporting a modest increase in vehicle trips to 8 per day, while not allowing any increase in delivery trips. Notice had not been sent to some types of businesses that would have deliveries. Two persons had talked to her about being bothered by contractors' trucks on their street. She preferred not to create a separate class of businesses that taught classes. She recalled that some who testified did not understand that the issue was the number of vehicle trips, not the number of students. She supported criteria 5 and 10.

Commissioner Holmes observed that the increase from 5 to 10 trips would double the number of home occupation generated trips and the impacts and safety concerns trips were causing. She indicated an increase to 7 or 8 trips per day would be acceptable. She held the City could not adopt code based on one business. She indicated she supported the criterion regarding parking on site. She did not favor a peak hour limit if the City did not define what Peak was. She noticed the code did not allow loading and unloading between 6:00 p.m. and 7:00 a.m. She asked if that meant there could be no deliveries in a neighborhood after 6:00 p.m. Spir confirmed that and explained that code limit had been adopted to address complaints about noise when construction contractor home occupation businesses loaded materials onto trucks at 6:00 a.m. The staff proposed to keep it. Holmes noted that might impact a home based teacher. Perhaps 7:00 p.m. would be better. Chair Martin indicated he agreed with Horsey

except regarding separating classes of businesses. He reasoned that if state law meant that the local code could not apply to daycare owners there were already two classes of business that were treated differently. He suggested going back to excepting "instruction of pupils" from the five-trip limit and putting a stricter limit on use of delivery trucks. That would put teaching violin lessons in the same category as daycare.

Commissioner Miller indicated she could agree to a limit of 7 or 8 trips per day. She would maintain the 6:00 p.m. To 7:00 a.m. prohibition because in a residential neighborhood a home occupation should have to limit business hours in order to allow residents to have their "home time" and have their neighborhood back.

Vice Chair Babbitt agreed with Commissioner Horsey about the public outreach effort. He planned to talk about it during the CCI segment later. He would reduce the limit of trips to 8 if there was not enough support for 10. If the Commissioners recommended going back to the old code, "instruction of pupils" had to be better defined. Would that include bible study groups, dog grooming parlors or seamstress shops? He recognized the intent to limit deliveries was to address activities by contractors and landscapers, but he was concerned that would have an unintended effect on other types of businesses.

Commissioner Steel did not want to separate instruction from other home occupations. She reasoned it was an imposition on the neighborhood to allow increased traffic beyond what one would expect in a residential neighborhood. She observed that people tend to drive faster when they were not close to their own home. She indicated she agreed with the staff's decision to defer to neighbors rather than the home occupation. There were sustainability advantages to allowing home occupations in neighborhoods and it should not be discouraged, but great consideration needed to be given to the neighbors. Commissioner Horsey announced she had been persuaded by Commissioner Miller that code loading and unloading time limits should be preserved to allow the neighborhood to get back to being a neighborhood. She acknowledged the City was obliged to conform to state daycare statutes, but she did not want to create different local classifications. Those distinctions would be difficult to justify. An accountant working from home generated client traffic. She asked if the notice that had been sent was legally adequate. Spir advised notifying people within 100 feet of the nine businesses exceeded the CDC obligation and legislative notice requirements. The staff did that just to bring more people into the process after the Commission asked for that. It had generated more testimony in the past few days. At the first hearing the Commissioners had heard from proponents. At the current hearing they heard from opponents. So they were getting better balance. If the staff had send notice to the other types of home occupations it would be at a huge cost. Horsey wanted to know what the outreach would have been for the broader group of proposed amendments. Director Sonnen advised the staff strategy was to distribute notice as appropriate to each proposed amendment. It was to those who were likely to be impacted. That was what he thought the Commissioners wanted. The City had never done a property owner notice for legislative items like this before. If the City had notified every household with the potential to house a home occupation it could cost as much as \$4,000. So he had decided to keep it narrower.

Chair Martin clarified that it was the Planning Commission, not the Council, which had recognized the home occupation amendments were more than just housekeeping amendments and had recommended keeping them separate from the larger package. Attorney Hall advised it would be legally permissible to have code exceptions for students or other types of home occupations. Chair Martin explained he would prefer to have code that applied to everyone, but the reality was state law ensured there would always be two categories. If the music teacher moved away and someone else moved into that house and opened a daycare the situation on that street would not change. If the code allowed 8 or 10 trips per day and the City solved the safety problems on the street it might keep the music teaching business alive. But it would not be acceptable to have 10 contractor trucks driving there every day. He assumed a home occupation that attracted students would likely schedule them a half hour apart and they would come in cars and SUVs. The pragmatic solution was to go back to the old code that did not restrict student trips.

Commissioner Steel stressed it was important to regulate all trips. She did not favor making any distinction in type of trip. She held that each vehicle moving through a residential neighborhood had the potential to cause an accident. It did not matter if the street was wide, narrow or a cul-de-sac. It did not matter whether it was a small car or a delivery vehicle. The young child of someone she knew had been killed by an SUV in a residential neighborhood. Children should be able to safely bike and play on their street. The way the state treated daycare businesses was not something the Commission should consider. It should look at everything else as a whole. Commissioner Wood agreed with Steel. Statistically the more traffic there was the greater the potential for accidents.

The Commissioners took a ten minute break in order to quietly consider the information and then reconvened. Horsey referred to the staff-proposed code amendments on the slide being displayed and clarified it was not newly created text, but was text from the staff report. Babbitt talked about family time. He questioned whether the 6:00 p.m. cutoff was realistic. Many students got out of school between 3:30 and 4:00 p.m. Parents often not get off work until 5:00 pm. His daughter took clarinet lessons that started at 7:00 p.m. He would agree to a limit of 8 trips per day, but wanted to change the ending time to 7:00 p.m. The staff clarified for Chair Martin that contractors with building permits were allowed to work until much later. They did not know what the permitted hours were for hired contactors using leaf blowers. Chair Martin then observed that extending the ending time would not be out of line with the code. Steel indicated she could agree to the change from 6:00 p.m. to 7:00 p.m. Monday - Friday, but she did not want to change the weekend hours. She anticipated that instructors could find creative ways to work within the permitted hours. For example, they might give group lessons.

Vice Chair Babbitt moved to recommend the Council approve CDC-09-05 as the staff had drafted it (and as was displayed on a slide being shown at the hearing) with two changes.

37.020 General Standards:

- **A(10): Modify part of this provision to specify that vehicles are not allowed to be loaded or unloaded between the hours of 7:00 p.m. and 7:00 a.m. Monday through Friday.**
- **A(13): The beginning of the first sentence would specify, "The use creates no more than eight total vehicle trips per day,".**

Commissioner Steel **seconded** the motion and discussion followed. Commissioner Holmes asked if the end time should be 7:30 p.m. because if a 30-minute lesson started at 6:45 it would go past the 7:00 p.m. cutoff time and the business could lose its license to operate. Steel considered 7:00 p.m. a reasonable compromise that would accommodate the majority of businesses. There might be an instance where someone was there until 7:15 p.m. Some would need to modify their schedule slightly. She explained she was thinking of the neighbors who would want their neighborhood to quiet down and go back to them in the evening. Commissioner Miller wanted to set the limit at 7:00 p.m. when lessons should stop. This was a compromise. The home occupation was being allowed more trips per day. As a parent a later end time would work better, but as a good neighbor she would not allow lessons to go beyond 7:00 p.m. Commissioner Horsey observed that from a practical perspective all knew there would be lessons going past 7:00 p.m. That was happening now all over the City. But setting an end time would give the neighbor who had a problem with it a basis for working out a compatible resolution with the home occupation owner.

The vote was conducted and the motion passed 7:0. Chair Martin announced the complete record of the hearing would be forwarded to the City Council.

ITEMS OF INTEREST FROM THE PLANNING COMMISSION

Director Sonnen confirmed for Commissioner Steel that the issue of adequacy of the 100-foot notice radius was on the list of work items. The primary issue would be how much it cost. Steel recalled hearing testimony that night from someone who said he had received notice, but his neighbor had not received notice. She recalled a time she had not been sent notice but her neighbor had received it. Babbitt explained that was the kind citizen involvement-related issue the memorandum to the Council should talk about.

Commissioner Horsey observed the PUD/Infill Task Force had done good work. She wanted to know how to keep that momentum going while Planner Kerr was filling in as Communications Director for three months. Vice Chair Babbitt indicated he had served on the task force and would be happy to continue to move forward with the work, but he understood it did not plan to hold any more meetings and might not even exist anymore. Sonnen related that Kerr planned to use what time he might have available to carry out planning duties. He was the lead staffer dealing with the Lake Oswego/Tigard Water Partnership treatment plant project and the staff was also working on other demanding programs. He would ask Kerr to offer an update on the status of the task force work and a prognosis.

Commissioner Holmes encouraged all to attend a Legal Issues for Planners seminar to be held in Portland on December 2.

ITEMS OF INTEREST FROM COMMISSION FOR CITIZEN INVOLVEMENT

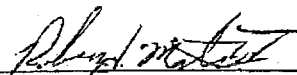
The Commissioners discussed the memorandum Commissioner Steel had drafted. She recalled in the pre-meeting work session Vice Chair Babbitt had suggested the Commissioners make more specific recommendations. She offered to revise the draft to incorporate things the Commissioners had talked about at the work session and then forward it to Babbitt so he could add specifics. Babbitt explained he preferred that the entire Commission start with the drafted recommendations and identify specific ways to address them. It should not be just one person's perspective. He observed the Minutes of the September 21 meeting highlighted some specific areas citizens had concerns about. He suggested for example instead of telling the Council to fix the problem that citizens did not feel the City listened to them the CCI could provide the Council with specific recommendations. Chair Martin suggested it would be easier if Babbitt worked on it first and then offered it for the entire Planning Commission to work on. Commissioner Horsey suggested if the Commissioners needed to get something to the Council right away they could break the work up onto two parts. But Chair Martin preferred to do it once and do it right. He noted the changes the Commissioners had discussed in work session were marked in red. They had reorganized text to make it very clear what the scope of the memo was. Horsey recalled they had concluded they should ask for a specific response from the Council. Chair Martin related he and Steel had talked to the City Manager and found he was very receptive to the ideas with some minor concerns. So the CCI could ask the Council to direct the City Manager to create administrative procedures to implement the improvements. Steel cautioned the Commissioners to be sensitive about getting overly involved in a director's business. She suggested an alternate approach to continuing to work on the memo would be to attach the September 21 minutes with all the citizen comments to the memo and ask the Council to read it and consider their suggestions. Chair Martin indicated he believed those who read the document would get a very clear idea where the CCI was coming from and what it was trying to accomplish.

ITEMS OF INTEREST FROM STAFF (None)

ADJOURNMENT

There being no other business, Chair Martin adjourned the Planning Commission meeting at 10:05 p.m.

APPROVED:


Robert Martin, Chair

12/07/2011
Date



City of
West Linn
22500 Salamo Road #600
West Linn Oregon 97068

STAFF REPORT

FOR THE PLANNING COMMISSION

FILE NUMBER: CDC-09-05

HEARING DATE: November 2, 2011

REQUEST: City initiated amendments to the Community Development Code ("CDC") relating to home occupations

APPROVAL CRITERIA: Community Development Code Section 98.100

STAFF REPORT PREPARED BY: Peter Spir, Associate Planner

Planning Director's Initials 

EXECUTIVE SUMMARY

Since the CDC was amended several years ago to apply a limit of five trips per day for home occupations, the concern is that the trip limitation renders some commonly accepted home occupations unworkable. These include in-home music or language teachers and businesses that require some limited contact with customers, such as accountants or attorneys. These types of uses are generally acceptable to the public, but they often exceed the current 'five trips per day' limitation.

On August 3 and August 17, 2011, the Planning Commission held public hearings on proposed CDC housekeeping amendments including amendments related to home occupations. Five people testified in favor of increasing allowable trip generation for home occupations. A petition, signed by 42 residents, was also favorable and was submitted into the record. There was no opposition to the home occupation amendments. The Planning Commission voted unanimously to recommend approval of the CDC amendment package with the exception of the allowable trip generation of home occupations.

At the City Council hearing on September 26, 2011, the Planning Commission's reservations about the number of daily trips allowed for home occupations and their unwillingness to endorse the amendment

without further public input was duly noted by City Council. So, whereas the remainder of the housekeeping amendments were approved by City Council, City Council voted to remand the home occupation element back to the Planning Commission with the expectation that further testimony would be heard and it would then be brought back to City Council for a final hearing.

The exact motion by Council President Carson on September 26, 2011 was to direct staff to *"expeditiously prepare a code amendment to the vehicular trip standards of Section 37.020(A) of the CDC for the purpose of addressing its impacts on desirable home occupation uses without adversely impacting the surrounding neighborhood."*

To increase opportunities for public input by the people most likely to be impacted by this proposed code amendment, staff sent public notices of the November 2, 2011 Planning Commission hearing to all properties within 100 feet of the nine home occupations in West Linn that are identified as offering tutoring to students. Staff finds that, given the positive public input to date, the fact that other cities accommodate more trips and West Linn's previous allowance for more home occupation trips, increasing the permitted number of trips should not have an adverse effect, particularly if the trips are spread throughout the day. Staff offers alternative language allowing ten trip per day or five trips per peak hour and recommends the latter.

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GENERAL INFORMATION

APPLICANT: City of West Linn
22500 Salamo Road
West Linn, OR 97068

REPRESENTATIVE: Peter Spir, Associate Planner

SITE LOCATION: City-wide

LEGAL

DESCRIPTION: N/A

SITE SIZE: N/A

ZONING: N/A

COMP PLAN

DESIGNATION: N/A

120-DAY PERIOD: Not applicable for legislative items

PUBLIC NOTICE: Notice was provided to the State Department of Land Conservation and Development and other effected agencies on May 13, 2011. Public notice was published in the West Linn Tidings on July 21, 2011 and sent to all neighborhood associations and interested parties on July 13, 2011.

Notice was also required for the remanded home occupation element. Public notice was published in the West Linn Tidings on October 20, 2011 and sent to all neighborhood associations and interested parties on October 13, 2011. All notice requirements have been satisfied. In addition to the statutorily required notices, staff also sent notices to 105 properties within 100 feet of nine student oriented home occupations to broaden the chances of public input on this issue.

BACKGROUND

The CDC currently limits home occupations to five trips per day. While that number may work for some uses, for others, like in-home music or language teachers, the limitation is unworkable. Historically, uses that involved students were recognized as having unique needs and the CDC reflected that by exempting student related trips for the majority of the past 20 years.

On August 3 and August 17, 2011, the Planning Commission held public hearings on proposed CDC housekeeping amendments including amendments related to home occupations. Five people testified in

favor of increasing allowable trip generation for home occupations. A petition, also favorable, was submitted into the record. There was no opposition to the home occupation amendments. Concerned that this issue eclipsed the definition of "housekeeping" code amendments and wanting to hear and consider both sides of the issue, the Planning Commission voted unanimously to recommend approval of the CDC amendment package with the exception of the allowable trip generation of home occupations.

At the City Council hearing on September 26, 2011, the Planning Commission's reservations about the number of daily trips allowed for home occupations and their unwillingness to endorse the amendment without further public input was duly noted by City Council. City Council voted to remand the home occupation element back to the Planning Commission with the expectation that further testimony would be heard and it would then be brought back to City Council for a final hearing.

ANALYSIS

Since the code was amended in 2008 to apply a limitation of five trips per day for home occupations, the concern has been that the trip limitation renders some commonly accepted home occupations unworkable. These include in-home music or language teachers and businesses that require some limited contact with customers, such as accountants or attorneys. These types of uses are generally acceptable to the public, but they often exceed the 'five trips per day' limitation currently in the code.

The Planning Commission recognized that the current limit on vehicle trip generation is a significant constraint for this sub-category of home occupations; however, they concluded that the potential for impacts on surrounding neighborhoods requires that more extensive public outreach be undertaken and more time and consideration should be devoted to this issue.

The following sample of West Linn's CDC shows how the numbers of allowable trips have vacillated between five and ten trips per day and that, for most of the last 20 years, trips generated by pupils were exempt from the trip standards.

- 1983 home occupations "shall not generate vehicular traffic measurably in excess of that normally associated with a single family residential use."
- 1999 type I home occupations: "shall have no more than five deliveries or customer trips (to and from) per day, not including instruction of pupils, except home stay guests are permitted."
- 1999 type II home occupations stated the use could create "no more than 10 deliveries or trips (to and from) per day, not including instruction of pupils."
- 2007 type I home occupations: "shall have no more than five deliveries or customer trips (to and from) per day, not including instruction of pupils."

- 2007 type II home occupations stated the use could create “no more than 10 deliveries or trips (to and from) per day, not including instruction of pupils and trips generated by bed and breakfast guests.”

Day cares are exempt from trip limitations

Staff noted in both the Planning Commission hearing and at the City Council work session a misapprehension that a day care facility’s relatively high morning drop-offs and late afternoon peak pickups needed to be factored into the decision. Day care facilities, serving up to 16 children, including the children of the homeowner, are exempt by Oregon Revised Statute 657A.440 from any local zoning ordinance that would be more restrictive to day care than it is to residential uses. Day care facilities (“child care” as they are called by the State of Oregon) are specifically allowed in all residential zones.

ORS 657A.440 Application of zoning ordinances to registered or certified family child care homes. (1) A registered or certified family child care home shall be considered a residential use of property for zoning purposes. The registered or certified family child care home shall be a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single-family dwellings. A city or county may not enact or enforce zoning ordinances prohibiting the use of a residential dwelling, located in an area zoned for residential or commercial use, as a registered or certified family child care home.

(2) A city or county may impose zoning conditions on the establishment and maintenance of a registered or certified family child care home in an area zoned for residential or commercial use if the conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone.

(4) This section applies only to a registered or certified family child care home where child care is offered in the home of the provider to not more than 16 children, including children of the provider, regardless of full-time or part-time status. [Formerly 418.817; 1995 c.278 §20; 1999 c.743 §17; 2001 c.704 §6; 2003 c.293 §12; 2005 c.408 §2]

The ORS language was established in response to the problem of too many cities and counties imposing untenable conditions of approval on uses that were considered to be critically important to working parents and their families.

So while the City of West Linn may legally classify day cares as home occupations, we are prohibited from limiting the number of trips to these day cares since we do not limit the number of trips coming to and from single family homes. Since it is improbable that West Linn would ever undertake such restrictions, we must defer to the ORS and ignore day cares as they relate to trip generation.

What other cities allow

Staff also surveyed of other jurisdictions and discovered the following:

City	Number of allowed trips or standard
Tigard	6 per day
Wilsonville	traffic must be "kept to a minimum"
Beaverton	8 per day
Hillsboro	10 per day on average
Portland	8 per day
Tualatin	10 per day and 20 per day for instructional related home occupations
Lake Oswego	"...shall not alter the residential character of the neighborhood."

Public Outreach

On the subject of more extensive public outreach, staff sent notice of the November 2, 2011 Planning Commission hearing to all property owners within 100 feet of nine home occupations that offer tutoring (piano, language, etc.), which translates into 105 households. The expectation was that these homeowners living next door to home occupations would accurately represent those individuals most likely to be impacted by the proposed code changes. To date, there have been no comments from notified households. The record shows that five people did testify in favor of the amendment and that a supportive petition of 42 names was also submitted into the record.

Legislative intent of the 2008 code change to eliminate exemption for students

Until 2008, the CDC included language in chapter 37 which limited the number of daily home occupation trips to five, but explicitly excluded "...trips associated with the instruction of pupils." To see if there was some background or public concern that might explain why the exemption was eliminated, staff uncovered an April 10, 2008 memo to Chris Jordan, City Manager from Senior Planner Chris Kerr which summarized an earlier City Council work session regarding proposed amendments (CDC-07-02) to Chapter 37:

"2. The Council requested that the existing CDC language that specifically excludes vehicular trips that are associated with the instruction of pupils be deleted. Currently, when evaluating the impacts of a home occupation, trips related to instructing pupils are not included in the traffic calculation. This is inappropriate since vehicle traffic is a principle cause of disruption in residential communities, regardless of its origin. Therefore, Staff supports amending this Section of the Code to clarify that the impacts of a home-based business will include all trips associated with the use."

From this memo it is clear that City Council simply wanted students to be counted in the daily trip tally and that they were not acting out of concern that home occupation trip generation was getting out of hand and had to be reduced. Planning Commission minutes provided nothing to indicate that there were any problems with excessive trip generation either.

Alternatives

Staff has included for the Planning Commission's consideration two alternative amendments related to vehicular trips for home occupations. Two alternatives are as follows:

ALTERNATIVE 1:

37.020 GENERAL STANDARDS

A. A home occupation shall comply with all the following operating standards:

...

13. The use creates no more than ~~five~~ ten total ~~deliveries~~ vehicle trips per day including employees, all deliveries, and customers. ~~vehicular trips per day~~. One trip is equal to one vehicle entering the site and exiting the site.

ALTERNATIVE 2:

A. A home occupation shall comply with all the following operating standards:

...

13. The use creates no more than ~~five~~ total ~~deliveries~~ vehicle trips during the peak hour of use including employees, all deliveries, and customers. ~~vehicular trips per day~~. One trip is equal to one vehicle entering the site and exiting the site.

Either alternative will address those home occupations that require more than five trips over the course of the day. However, in staff's experience, vehicle trips spread out over the course of the day are less of an issue than at one time (e.g., workers and equipment arrive at 7:00 AM prior to leaving for a job site). To address this concern, Alternative 2 proposes to limit the number of vehicle trips to five per peak hour as opposed to ten per day. The intent is to continue to include a quantifiable method of limiting the impacts of a home occupation on the surrounding residents, while allowing a continuous, low level stream of traffic, such as is the case with instruction of pupils. Additionally, using a peak hour standard will make enforcement more practical, as it will be easier to count traffic during one peak hour rather than all day. As an example, this would prevent the landscape business from having 10 trucks arrive at 6:00 AM and then re-convene at 5:00 PM, but allow a teacher to have five students in morning, then five more at different times over the course of the day.

Approval criteria

The approval criteria for legislative amendments are found in Chapter 98 of the CDC.

98.100 STANDARDS FOR DECISION

- A. *The recommendation of the Planning Commission and the decision by the City Council shall be based on consideration of the following factors:*
1. *The Statewide planning goals and rules adopted under Chapter 197 ORS and other applicable State statutes;*
 2. *Any federal or State statutes or rules found applicable; and*
 3. *Applicable plans and rules adopted by the Metropolitan Service District.*
 4. *The applicable Comprehensive Plan policies and map; and*
 5. *The applicable provisions of the implementing ordinances.*
- B. *Consideration may also be given to:*
1. *A mistake or inconsistency in the Comprehensive Plan or implementing ordinance as it relates to the property which is the subject of the proposal; and*
 2. *Factual oral testimony or written statements from the parties, other persons and other governmental agencies relevant to the existing conditions or factors in subsection A or (B)(1) of this section. (Ord. 1226, 1988; Ord. 1474, 2001)*

The applicable standards from CDC Section 98.100 are addressed in the findings that follow.

Finding No. 1:

Statewide Goal 1 Citizen Involvement. The City's acknowledged Comprehensive Plan and CDC provide for or exceed all requirements for a citizen involvement program which defines the procedures by which the general public will be notified in the on-going land use planning process. All required notification measures and opportunities for input as specified in these documents were provided during this process. By remanding these amendments to the Planning Commission the opportunity for more extensive public involvement was created. In addition to the statutorily required public notice of the hearing, staff mailed notice to 105 property owners most likely to be impacted by the amendment: property owners within 100 feet of nine existing home occupations that offer tutoring.

Finding No. 2:

The proposed amendments that modify the manner in which vehicular trips are measured for home occupation uses is intended to promote home occupations in the City with a recognition of the potential adverse impacts that can be created. This is consistent with and furthers the following components of the City's Comprehensive Plan:

Goal 6: Air, Water, and Land Resources Quality- Policy 5: "The City also recognizes the importance of home occupations in reducing commuting and helping limit the need for additional public infrastructure."

Goal 9: Economic Development - Policy 1: "Promote home occupations by developing and implementing supportive zoning and building codes and services and other regulations; require compatibility with surrounding neighborhoods."

Finding No. 3:

These amendments do not represent any major changes in policy and there are no applicable State or Federal statutes, or and Metropolitan Service District rules or other applicable ordinances beyond those being addressed in the Statewide Planning Goals that apply to these amendments, with the exception of ORS 657A.440 which has already been discussed.

Options

1. The Planning Commission could recommend approval of the amendments, Alternative 1 or 2 as proposed; or
2. The Planning Commission could recommend approval of the amendments, Alternative 1 or 2 as proposed, with modifications; or
3. The Planning Commission could recommend denial of the amendments and leaving the CDC 'as is'.

Recommendation

Staff recommends approval of Alternative 2 (five trips per peak hour).



 **City of
West
Linn**
**BUILDING DIVISION
22500 SALAMO RD
WEST LINN OR 97068**

**ATTEN: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF
LAND CONSERVATION & DEVELOPMENT
635 CAPITOL ST NE SALEM OR 97301-2540**

DEPT OF
JAN 12 2012
**LAND CONSERVATION
AND DEVELOPMENT**